

May 23, 2000

Colonel Leo W. Haseman, Director
Division of Enforcement
Minnesota Department of Natural
Resources
500 Lafayette Road
St. Paul, Minnesota 55155-4047

RE: In the Matter of the Appeal of the Trespass Citations Issued to Charles Richard Wilson, OAH Docket No. 11-2000-12848-2; Trespass Civil Citation No. 18171, and Johnathon Allen Innes, OAH Docket No. 11-2000-12849, Trespass Civil Citation No. 18172

Dear Colonel Haseman:

The above-entitled matters were consolidated for prehearing and hearing purposes with the agreement of all parties because the citations involved the same underlying facts. These two cases came on for a prehearing conference by telephone conference call on May 8, 2000, at 10:30 a.m. Because the matters could not be resolved during the prehearing conference, a hearing was scheduled to be held on May 18, 2000, at 3:15 p.m. The parties agreed that an in-person hearing was not necessary and that the hearing could be held by telephone conference call. Participating in the telephone conference call were the undersigned Administrative Law Judge, Wright County Deputy Sheriff Mark Tuttle, Charles Richard Wilson, and Johnathon Allen Innes. The property owner, Donna Carlson, was called by Deputy Tuttle as a witness and provided testimony relating to the alleged civil trespass. I have reviewed the facts and the law, and have determined that the citation should be DISMISSED because the conduct involved (snowmobiling on private, unposted residential property) does not constitute a violation of Minn. Stat. § 97B.001 under the circumstances of this case. The basis for this recommendation is set forth below.

The facts in this matter are found to be as follows. On February 20, 2000, Mr. Wilson and Mr. Innes were snowmobiling in Monticello, Minnesota, and the surrounding area. At one point, they rode their snowmobiles through the front yard of Donna Carlson, who lives at 525 West River Street in Monticello. Because other snowmobilers had driven through Ms. Carlson's yard previously,

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there were snowmobile tracks in her yard. Ms. Carlson's property is located in a residential area of Monticello and is not agricultural in nature. She did not have any "no trespassing" or "no snowmobiling" signs posted in her yard, and did not have an opportunity to tell Mr. Wilson and Mr. Innes to leave her property. When she saw Mr. Wilson and Mr. Innes going through her yard, Ms. Carlson ran outside and followed them in her truck. She never lost sight of them and continued to follow them as they rode out of town. She called the 911 dispatcher and told the dispatcher the snowmobile registration numbers. Ms. Carlson eventually caught up with Mr. Wilson and Mr. Innes outside Big Lake and confronted them.

Deputy Tuttle responded to Ms. Carlson's complaint later in the day on February 20. He went to Ms. Carlson's home and observed several sets of snowmobile tracks going across her front yard. Deputy Tuttle tracked down the registration numbers that Ms. Carlson had provided, and found out that Mr. Wilson owned one snowmobile and a friend of Mr. Wilson's owned the other. Deputy Tuttle eventually determined that the two snowmobiles were driven by Mr. Wilson and Mr. Innes. When he contacted Mr. Wilson, Mr. Wilson indicated that they had been snowmobiling in Monticello on February 20, and said that a woman had stopped them near Big Lake and claimed that they had driven across her front yard. Deputy Tuttle issued a citation for civil trespass to Mr. Wilson and Mr. Innes on February 29, 2000.

Mr. Wilson and Mr. Innes testified during the hearing that they had not ridden their snowmobiles through anyone's yard on the day in question. Mr. Wilson also denied that he had earlier told Deputy Tuttle that they had ridden through the yard because there was not enough snow on the street. Mr. Wilson and Mr. Innes believed that Ms. Carlson may have confused them with other snowmobilers who were participating in a race on February 20.

Based upon a careful consideration of all of the information provided during the hearing, the Administrative Law Judge credits Ms. Carlson's version of the events of February 20. The testimony Ms. Carlson gave during the hearing was the same as the information she provided to Deputy Tuttle on February 20, thereby suggesting that this is not a story that she concocted. Ms. Carlson convincingly testified that she was ready on February 20 to pursue the next snowmobilers who went through her yard. When she saw Mr. Wilson and Mr.

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Innes drive through her yard, she immediately pursued them in her truck and never lost sight of them. She further stressed that no other snowmobilers were in their vicinity as she followed them, so it does not appear likely that she confused them with other snowmobilers who may have been out that day.

Under the circumstances, however, I recommend that the citations be dismissed. Minn. Stat. § 97B.001 is narrowly drawn to prohibit trespass by those engaging in "outdoor recreation" only where the land involved is agricultural or posted with "no trespassing" or similar signs, or where a person remains on land after being told to leave by the owner, occupant, or lessee of the property. It is undisputed that none of these circumstances is present here. Accordingly, it is appropriate to dismiss the citations issued to Mr. Wilson and Mr. Innes. Although the conduct might involve a violation of Minn. Stat. § 84.90 pertaining to limitations on the operation of recreational motor vehicles, Mr. Wilson and Mr. Innes have not been charged with a violation of that statutory provision and Administrative Law Judges do not have jurisdiction over cases involving alleged misdemeanors.

The law provides that the final decision in this matter must be made by the Commissioner (or his designee). The law further requires that the Commissioner must wait at least five days after receipt of this recommendation before he makes that final decision and permits Mr. Wilson and Mr. Innes to make any comments to him on the recommendation within that five-day period. The Commissioner must send a copy of his final decision to Mr. Wilson and Mr. Innes.

Respectfully submitted,

BARBARA L. NEILSON
Administrative Law Judge
Telephone: 612/341-7604

Enclosure

cc: Charles Wilson
Johnathon Innes
Mark Tuttle